IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1129 of 2002

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KYH PANDE - MANAGING TRUSTEE

Versus

SHAH JAGRUTIBEN NATVARLAL

Appearance:

1. Special Civil Application No. 1129 of 2002

MR NR TANDEL for Petitioner No. 1-2

MR DIPAK R DAVE for Respondent No. 1

MR KP RAVAL AGP for Respondent No. 2-3

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 09/07/2004

ORAL JUDGEMENT

1.1 The petitioners herein have challenged the orders of the Gujarat Secondary Education Tribunal (for short, "the Tribunal") dated 12/10/99, at Annexure 'A' to the petition, passed in Applications No.323/1995 and 266/1996, whereby, it was directed that respondent no.1 would be entitled to receive her salary from February 1996 till the date of the order of the Tribunal and also her unpaid salaries for the months of July, August and October 1995, in view of the fact that the interim order of the Tribunal had continued and the order dated 30/08/01, at Annexure 'C' to the petition passed in Review Application No.404/1999, whereby, it was dismissed for the reasons narrated in the judgment.

2.1 The brief facts of the case are that the petitioners are the Managing Trustee and the Principal of the Educational Trust created by the members of the minority. The said Trust started primary education in 1991 and secondary education in 1994. But, on account of non-availability of finance and insufficient number of students, the secondary school came to be closed.

2.2 It is the case of the petitioners that an Assistant Teacher who happened to be the in-charge Principal of the school at the relevant point of time, respondent no.1 herein, had tendered her resignation willingly and had approached the Tribunal by way of application being Application No.323/1995 on the ground that her resignation was obtained under duress. Application No.226/1996 was also preferred by respondent no.1 in order to challenge the subsequent action of the petitioners terminating her services from the school w.e.f. 20/03/96 in view of the closure of the school.

2.3 The said two applications were heard by the Tribunal and by judgment and order dated 12/10/99 at Annexure 'A' to the petition, the Tribunal gave the aforesaid directions. The said order was challenged in Review Application No.404/1999 which was also dismissed by the Tribunal by order dated 30/08/01 at Annexure 'C' to the petition. Hence, this petition.

3.1 Mr.N R Tandel learned advocate appearing for the petitioners has drawn my attention to the fact that earlier by way of an interlocutory order dated 24/04/96, the Tribunal had granted ad-interim relief in terms of Para 7(3) of the application being Application No.323/1995. The said order of the Tribunal dated 24/04/96 was stayed by this Court (Coram : Ms. R.M.Doshit, J.), while admitting the matter on 18/06/97 in S.C.A.No.5678/1996.

3.2 Mr.N R Tandel has further submitted that in spite of the fact that the order of the Tribunal was stayed by this Court, the Tribunal ignoring the said fact, by order dated 12/10/99 directed that respondent no.1 would be entitled for receiving her salaries from February 1996 till the date of the order of the Tribunal and was also entitled for receiving her unpaid salaries for the months of July, August and October, 1995, as if the interim order had continued.

3.3 Mr.Tandel for the petitioners has further submitted that the management is restricting their claim only qua the direction of the Tribunal for payment of salary for the period from February 1996 till the date of the order of the Tribunal, in view of the fact that pursuant to the order of this Court dated 14/07/03, salaries for the months of July, August and October 1995 were already paid to respondent no.1.

4.1 Mr.D R Dave learned advocate appearing for respondent no.1 has submitted that against the order dated 20/03/98 in S.C.A.No.2067/1998, Letter Patent Appeal was preferred which has been admitted and is pending. Now, assuming that if the Appeal is dismissed, then, it will have no relevance with the present matter, as that was against the termination of the petitioner which was challenged in Application No.226/1996. Moreover, the Tribunal by its order dated 12/10/99 had given the aforesaid directions which was already stayed by this Court in the earlier proceeding namely S.C.A.No.5678.1996.

5.1 In my view, the contentions raised by Mr.Tandel are required to be accepted inasmuch as the respondent Teacher has not challenged the order of the Tribunal, dismissing her Applications being Application No.323/1995 and 226/1996, in view of the fact that the order of the Tribunal was already stayed by this Court by order dated 18/06/97. It was not open to the Tribunal to direct that respondent no.1 was entitled for salary as if the interim order of the Tribunal had continued. This is an error apparent on the face of the record. Therefore, in exercise of the powers under Article 227 of the Constitution of the India, the direction of the Tribunal is required to be quashed and set aside.

6.1 For the foregoing reasons, this petition is allowed. The order of the Tribunal in Application No.323/1995 dated 12/10/1999 directing the petitioners to pay salary for the period from February 1996 till the

date of the order of the Tribunal and the order dated 30/08/01 passed in Review Application No.404/1999 are quashed and set aside. Rule is made absolute accordingly with no orders as to costs.

(K. S. Jhaveri, J.)

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